

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

PAGANAS,

Plaintiff,

-against-

TOTAL MAINTENANCE  
SOLUTION, LLC et al.,

Defendant.

15-CV-5424 (JBW)

United States Courthouse  
Brooklyn, New York

October 17, 2016  
11:30 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR MOTION  
BEFORE THE HONORABLE JACK B. WEINSTEIN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: LAW OFFICE OF ROBERT S. POWERS  
1540 August Road  
North Babylon, New York 11703  
BY: ROBERT S. POWERS, ESQ.

For the Defendant MILMAN LABUDA LAW GROUP PLLC  
Third-Party Plaintiff: 3000 Marcus Avenue  
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Lake Success, New York 11042  
BY: PERRY S. HEIDECKER, ESQ.

For the Third-Party DAVIS WRIGHT TREMAINE LLP  
Plaintiff: 1251 Avenue of the Americas  
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BY: LYLE ZUCKERMAN, ESQ.  
SCOTT COOPER, ESQ.

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1 (In open court.)

2 COURTROOM DEPUTY: All rise. Civil cause for  
3 motion, Paganas versus Total Maintenance Solution, LLC.

4 Counsel, note your appearance, please. For the  
5 plaintiff.

6 MR. POWERS: For the plaintiff, Robert S. Powers,  
7 1540 August Road, North Babylon, New York 11703.

8 THE COURT: Where's Mr. Paganas?

9 MR. POWERS: He's working today.

10 THE COURT: Didn't I ask that he be here?

11 Did we ask that he be here?

12 THE CLERK: I'll check the original order.

13 (Pause.)

14 THE COURT: Is he available by telephone?

15 MR. POWERS: Yes, I believe. Yeah.

16 THE COURT: All right. We'll take the other  
17 appearances.

18 MR. HEIDECKER: Your Honor, for the defendant Total  
19 Maintenance Solution, Reggie Tartagglione and Aron Weber, the  
20 law firm of Milman Labuda Law Group by Perry Heidecker, 3000  
21 Marcus Avenue, Lake Success, New York. To my right is Mr.  
22 Reggie Tartagglione, who's an individually named defendant and  
23 a member of defendant limited liability company.

24 MR. TARTAGGLIONE: Good morning.

25 THE COURT: Good morning.

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1 MR. ZUCKERMAN: Good morning, Your Honor. Lyle  
2 Zuckerman from the law firm of Davis Wright Tremaine on behalf  
3 of St. John's University, and I'm here with my colleague Scott  
4 Cooper from the same law firm.

5 THE COURT: Thank you.

6 Item 29, 2/22/2016, St. John's motion to dismiss,  
7 plaintiff shall be present.

8 I suppose you didn't read that as requiring him to  
9 be present today?

10 MR. POWERS: I think that was a prior motion, Your  
11 Honor.

12 THE COURT: Yes, okay.

13 MR. POWERS: I don't recall on this particular  
14 motion.

15 THE COURT: We usually require that. It's going to  
16 be difficult to deal with the problems I have with this case  
17 without his being present.

18 Well, whose motion?

19 MR. HEIDECKER: Your Honor, there are two motions  
20 before the Court today.

21 THE COURT: Yes.

22 MR. HEIDECKER: The first is the motion by  
23 defendants against the plaintiff for failure to state a cause  
24 of action.

25 THE COURT: You still keep saying "failure to state

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1 a cause of action." I'm not interested in that. This is a  
2 motion, as I understood it, for summary judgment.

3 MR. HEIDECKER: Yes.

4 THE COURT: Is it not?

5 MR. HEIDECKER: Yes.

6 THE COURT: A failure to state a cause of action has  
7 got nothing to do with this. That's why I wanted the  
8 plaintiff here, because it's the facts now that count, not the  
9 allegations.

10 But go ahead. I'm sorry I interrupted you.

11 MR. HEIDECKER: That's quite all right, Your Honor.

12 Your Honor, the facts as adduced in discovery show  
13 that plaintiff pleaded that he only had -- that he worked a  
14 set amount of overtime typically in each week of his  
15 employment. When he was deposed, he said that other than his  
16 general memory, he had no other way to fix the amount of  
17 overtime he worked. And when the defendants demanded  
18 documents from the plaintiff, he said he had no documents.

19 Therefore, not only did that not satisfy any of the  
20 requirements that the Second Circuit set forth in the trilogy  
21 of Nakahata, Lundy and Dejesus, it would render any claim for  
22 damages speculative. Therefore, we move for summary judgment.

23 In response to our motion, all of a sudden for the  
24 first time in late December when there was a trial date  
25 already set and when discovery had been long closed, we

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1 received time records from the plaintiff. His deposition had  
2 never been supplemented or corrected. His document production  
3 had never been supplemented or corrected. And we respectfully  
4 argue to the Court that we're being irrevocably prejudiced by  
5 being sandbagged at the last moment.

6 THE COURT: Well, you could have called them for the  
7 deposition. I'm not holding out any critical evidence. The  
8 rules require that the cases be decided on the merits wherever  
9 possible. So your not having information, if you want to take  
10 further deposition using that information, you're free to do  
11 so.

12 MR. HEIDECKER: Thank you, Your Honor.

13 THE COURT: Do it immediately.

14 MR. HEIDECKER: Will that affect the trial date?

15 THE COURT: What's the trial date now?

16 MR. HEIDECKER: November 14.

17 THE COURT: No. Just do it right away.

18 Now, I just can't deal with this motion without the  
19 plaintiff being present. I want to know what he was doing in  
20 essentially, as I understand it, the same job supervising  
21 these cleaners at St. John's.

22 That is the case, wasn't it? You had prior  
23 contracts equivalent to the ones that the Total Maintenance  
24 had here?

25 MR. ZUCKERMAN: If you're asking whether St. John's

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1 engaged prior contractors to perform similar services, the  
2 answer is yes.

3 THE COURT: Yes. So you were using a contractor,  
4 essentially, on a cost plus three percent basis, as I  
5 understand all of the evidence now before me.

6 MR. ZUCKERMAN: This contract, yes. I don't know  
7 what the answer is with respect to prior contractors.

8 THE COURT: All right. Was he working for a prior  
9 contractor at St. John's?

10 MR. POWERS: Yes, several.

11 THE COURT: What was he getting paid, as a worker or  
12 an executive?

13 MR. POWERS: Well, they were paying different.  
14 There were times when he was getting overtime. There was  
15 times when he wasn't.

16 THE COURT: What was he doing when he wasn't getting  
17 overtime?

18 MR. POWERS: Well, there were times when he was  
19 getting an hourly wage during the course of his -- he worked  
20 there for almost 30 years. There were times when he was  
21 getting an hourly and sometimes he was getting what is  
22 classified as a salary.

23 THE COURT: On what basis was he getting a salary?  
24 As an executive and a supervisor?

25 MR. POWERS: Well, we don't know what they

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1 classified it. I'm assuming they classified him --

2 THE COURT: Well, what was he doing? Do you know?

3 MR. POWERS: He was doing the same thing. He was  
4 maintaining the buildings.

5 THE COURT: How many people did he have that were  
6 working under him?

7 MR. POWERS: Well, they weren't really working under  
8 him. They were union employees. He was a nonunion employee.  
9 The porters that worked in the buildings were union employees  
10 and he was responsible for, depending different times  
11 different companies, he worked for maybe four buildings, five  
12 buildings, six buildings.

13 THE COURT: How many people were actually doing the  
14 sweeping and the cleaning up in the buildings that he was  
15 responsible for.

16 MR. POWERS: It could have been four or five.

17 THE COURT: You don't know.

18 MR. POWERS: Well, it's different times --

19 THE COURT: It's critical here.

20 Did he ever recommend that somebody was doping off  
21 on the job and should have been fired?

22 MR. POWERS: No. There was -- he testified that he  
23 was not involved in discipline or hiring or firing anyone.

24 THE COURT: Did he tell them what to do?

25 MR. POWERS: Only in the sense that if he had an

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1 event and he had to put tables or chairs or set up a screen,  
2 he would say we have to put the tables.

3 THE COURT: And tell them where to put it.

4 MR. POWERS: Well, and he would work with them. He  
5 would set the tables up with them.

6 THE COURT: Did he tell them where to put it? And  
7 how many people are we dealing with?

8 You say 90 percent, I think in the papers, of his  
9 time was actually doing the what I'll call the menial type of  
10 work.

11 MR. POWERS: Right.

12 THE COURT: But that doesn't make sense, unless we  
13 know how many people he had here.

14 The facts here resolve the case. I hate to bring in  
15 other attorneys, but I can't proceed without knowing what he  
16 did, how many people he had under him. Was he doing it  
17 differently this time. His compensation is roughly double  
18 that of even the union employees here, that suggests a  
19 supervisor.

20 When you have a man or woman who's effectively  
21 supervising the job, if he sees somebody he's supervising  
22 having trouble sweeping up or polishing something, he gives it  
23 a hand as a person loyal to his employer. That's common  
24 practice of supervisors.

25 It's very frustrating.



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1           What do you want me to do?

2           I think under the contract, in any event, assuming,  
3 just assuming for the sake of argument that we're going to  
4 find that he was not exempt, which seems dubious to me at the  
5 moment, that he was not exempt and he should have gotten  
6 X-amount of overtime, he should have been paid the X-amount  
7 and then that would have been billed to St. John's, plus three  
8 percent, right?

9           MR. ZUCKERMAN: No, Your Honor, because we, St.  
10 John's, would meet with TMS each week and we would go over  
11 with them exactly what work was going to be performed. They  
12 billed us for the cost of that work, meaning the labor,  
13 supplies, et cetera, plus three percent.

14           To the extent that the plaintiff is owed any money  
15 here, it's not as the result of him performing services for  
16 which we were responsible for paying costs.

17           THE COURT: Why not?

18           MR. ZUCKERMAN: Because we paid his salary. We paid  
19 that cost. The only way liability --

20           THE COURT: No, but if I find that as a matter of  
21 fact he was a working employee, not a supervisor, therefore  
22 not exempt, you were not paying the full cost that you should  
23 have paid.

24           MR. ZUCKERMAN: But we --

25           THE COURT: I'm not talking about penalties or

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1 anything like that. I'm just talking about out of pocket.  
2 But that would require me to find that the plaintiff should  
3 have been paid X-dollars for overtime, which if they had paid  
4 it would have been billed to you.

5 MR. ZUCKERMAN: But we would have staffed the job  
6 differently, Your Honor, perhaps.

7 What's key here is that we contracted with TMS to  
8 lawfully employ these folks, and part of their obligation is  
9 to properly classify them. They continue to take the position  
10 today that he was properly classified. If they had done their  
11 job --

12 THE COURT: Right, but I may hold, on the basis of  
13 the trial, that they weren't classified properly and they  
14 should have billed you for more; they didn't bill you for  
15 enough.

16 MR. ZUCKERMAN: In which case they violated the wage  
17 and hour laws, just like any other employment law, for which  
18 St. John's was indemnified. It is a one-way indemnification.

19 So our liability, our client's liability, if at all,  
20 arises from their unlawful conduct, not the failure to pay  
21 wages. It's completely different. Otherwise, they would be  
22 incentivized to do all sorts of things that would be  
23 prohibited by the contract and then try to hold us liable at  
24 the end of the day, saying it falls under the definition of  
25 costs.

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1 THE COURT: Well, it's not a question of liability.  
2 It's a question of how much they should have paid at the  
3 moment.

4 MR. ZUCKERMAN: They should have paid, correct,  
5 because if we knew that this person was improperly classified,  
6 we would have said, for example, we don't want anyone working  
7 overtime. Which we do all the time, we the client, St.  
8 John's, do all the time. We say don't man the job with 50  
9 employees at overtime; add another two or three so we can  
10 avoid the cost of overtime. They've deprived us of that.  
11 They made their own judgment about the classification. If  
12 they're wrong, they violated the law for which we, St. John's,  
13 are indemnified.

14 THE COURT: Now, whose checks did these employees  
15 receive?

16 MR. POWERS: He was paid by TMS.

17 THE COURT: Plaintiff?

18 MR. POWERS: Plaintiff was paid by TMS.

19 THE COURT: And the workers, I'll call them the  
20 workers who did the work.

21 MR. POWERS: Well, there's two different -- it's a  
22 little more complicated than that because the people at the  
23 building that he worked at, I'll call it -- we'll call it  
24 during the regular daytime hours, they were porters, they were  
25 TMS employees. When he did events, if he had to do the alumni

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1 hall or the basketball game, the employees for that event were  
2 another company. It was Metro -- Metro something or other,  
3 which would not --

4 THE COURT: On the same kind of basis, cost plus?

5 MR. POWERS: Well, no, their contract was not --  
6 well, I think it was cost plus, but it was a little different  
7 than TMS.

8 But anyway, they had an agreement with, Metro had an  
9 agreement with St. John's, and on those events he was  
10 basically the only employee of TMS that was working those  
11 events.

12 THE COURT: Well, putting aside your argument, which  
13 is a powerful argument, what was happening over there? Was  
14 this plaintiff supervising these employees, or were you? What  
15 was happening?

16 MR. ZUCKERMAN: No, we weren't, Your Honor.

17 As we understood it, and have always understood it,  
18 there were five or six supervisors who supervised the work of  
19 over a hundred Local 32BJ unionized employees, and Mr. Paganas  
20 was one of them.

21 THE COURT: And this was one of the five, plaintiff?

22 MR. ZUCKERMAN: Correct.

23 THE COURT: Was he doing the same work as the other  
24 four?

25 MR. ZUCKERMAN: Other than on the basis as Your

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1 Honor speculated, which would be to chip in from time to time,  
2 no, that would be a violation of the 32BJ contract, and we  
3 certainly weren't aware of any. I'm not aware of any  
4 grievances.

5 THE COURT: I see. So, the usual situation is if  
6 somebody wants to pick a piece of paper off the floor and he's  
7 not the union person, he can't do it.

8 MR. ZUCKERMAN: Well, I think 32BJ is a little bit  
9 more lenient than that, but you're --

10 THE COURT: But that's the general position in New  
11 York.

12 MR. ZUCKERMAN: Your Honor understands.

13 And by the way, TMS testified at the 30(b)(6)  
14 deposition that they were supervisors and they did do  
15 supervisory work. So they're still purporting to St. John's,  
16 and we have no reason to doubt them, that they were  
17 supervisors at all times. And they've billed us, St. John's,  
18 as if he was a supervisor. We've paid those invoices, so  
19 we've paid the costs.

20 THE COURT: At double what the actual workers made.

21 MR. ZUCKERMAN: The actual rate. We could have had  
22 more than two other people working without incurring the  
23 overtime on the job, and that's why their argument that the  
24 damages that would flow from this trial are costs just doesn't  
25 pass the test.

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1 THE COURT: I understand your position.

2 MR. ZUCKERMAN: Thank you, Your Honor.

3 MR. HEIDECKER: Your Honor, may we be heard?

4 THE COURT: Of course.

5 MR. HEIDECKER: St. John's argues that like they  
6 were innocent bystanders while Total had total control of the  
7 field. That's not the way it was at all. The record shows  
8 that there was a succession of cleaning and maintenance  
9 contracts.

10 THE COURT: Yes, I understand that. This plaintiff  
11 worked through those.

12 MR. HEIDECKER: That's correct.

13 And, Your Honor, in order to insure continuity, it  
14 was requirement imposed by St. John's that the same people be  
15 employed in the same positions.

16 THE COURT: As supervisors?

17 MR. HEIDECKER: And the bargaining unit workers,  
18 Your Honor.

19 St. John's told us who to take, told us how much to  
20 pay them, and set forth the work that they wanted done under  
21 the contract. So they were the controlling agency, Your  
22 Honor, not an innocent bystander.

23 THE COURT: But whose check was paying these people?

24 MR. HEIDECKER: We paid them under Total checks,  
25 Your Honor.

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1 THE COURT: Then they were your employees here.

2 MR. HEIDECKER: We're not disputing that they were  
3 our employees.

4 What we are saying is that St. John's is not the  
5 victim because, as our customer --

6 THE COURT: And if they're your employees, you had  
7 the obligation to pay them properly.

8 MR. HEIDECKER: Your Honor, we paid them what St.  
9 John's told us to pay them.

10 THE COURT: St. John's isn't the law. They can't  
11 tell you to do the wrong things and get away with it.

12 If he was not supervising and was working over 40  
13 hours, earning overtime and hourly time under the New York  
14 law, you had the obligation to pay and bill them.

15 MR. HEIDECKER: Your Honor, we had every reason to  
16 believe, by the history, by the practice on the premise, and  
17 by the direction of St. John's, that these were exempt  
18 supervisors. There was no reason for us not to believe that  
19 they were not exempt.

20 THE COURT: Well, what caused you to believe that?

21 MR. HEIDECKER: Well, first of all, when we  
22 inherited them, they were salaried.

23 Second, the duties.

24 THE COURT: Was he always paid a salary by these  
25 prior subcontractors?

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1           MR. POWERS: His testimony was there was some that  
2 he was and some that he wasn't.

3           MR. HEIDECKER: Our immediate predecessor paid him  
4 on a salary.

5           MR. ZUCKERMAN: Clearly we didn't, St. John's did  
6 not dictate that of prior --

7           THE COURT: Excuse me.

8           Well, there's an in limine motion to exclude that  
9 from evidence. I'm not going to exclude it because it seems  
10 to me, if we go forward at all, it seems to me that it is  
11 admissible to show his, the plaintiff's, state of mind and for  
12 no other reason, as understanding that he was working there as  
13 an executive, not as a worker under the law, entitled to  
14 time-and-a-half with problems of laches, estoppel.

15           MR. HEIDECKER: All which we've pled, Your Honor.

16           THE COURT: Yes, I know.

17           We're playing Hamlet here without Hamlet. He's the  
18 man that knows what he was doing all this time and who was  
19 telling him what to do. I'm just wondering whether we should  
20 adjourn this for tomorrow and get him here.

21           What do you think?

22           MR. ZUCKERMAN: Your Honor, the plaintiff has not  
23 filed a claim against St. John's. We're not alleged to be  
24 joint employers or co-employers. So I think the issue that  
25 you have with respect to questions of fact concern the claim



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1 of the plaintiffs and the defendants, not St. John's.

2 THE COURT: Well, I understand, but that's assuming  
3 that I don't buy your argument and that the Court of Appeals  
4 doesn't buy your argument that St. John's was complicit to  
5 this failure.

6 MR. ZUCKERMAN: There's no -- I'm sorry.

7 THE COURT: I'd rather go on both grounds. If he's  
8 going to be exempt, I'd rather do it on that ground, as well  
9 as the ground that you are relying on, which makes sense of  
10 course. The contract is clear on indemnification.

11 MR. HEIDECKER: Your Honor, with respect --

12 THE COURT: The indemnification runs to St. John's,  
13 not from St. John's.

14 MR. HEIDECKER: Your Honor, we are not saying that  
15 St. John's owes us indemnification. The indemnification in  
16 the contract protects St. John's from claims by third parties  
17 or entities. We're not a third party. If their  
18 interpretation were adopted, we could never sue St. John's for  
19 breach of the contract because they --

20 THE COURT: Yes, you could. If they didn't pay your  
21 bills, you could sue them for failing to comply with their  
22 agreement, which was to pay you on costs plus three percent.

23 MR. HEIDECKER: Your Honor, rather, our claim is  
24 based on the simple formula in the contract that they have to  
25 reimburse us for the cost of wages and benefits.

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1 THE COURT: What do we have on tomorrow?

2 COURTROOM DEPUTY: Just one sentencing at 10:30.

3 MR. HEIDECKER: Your Honor, my client tells me he's  
4 not available tomorrow.

5 THE COURT: All right. What have you got to say?  
6 What was happening?

7 MR. TARTAGGLIONE: There's just something that I  
8 can't wrap my mind around. I'm not a lawyer. I don't  
9 understand this legal stuff.

10 THE COURT: Whose company were you running?

11 MR. TARTAGGLIONE: TMS.

12 The obstacle that I have, the thing that I can't get  
13 over in my head, usually when an employee is an exempt  
14 employee, that's a nonunion employee? The supervisor is  
15 exempt or not exempt?

16 MR. HEIDECKER: Exempt generally.

17 MR. TARTAGGLIONE: Okay. Usually when they have a  
18 complaint, it doesn't go anywhere. At the time of employment,  
19 they would probably go to the NLRB and get them involved to  
20 try to figure out --

21 THE COURT: Forget the NLRB.

22 MR. TARTAGGLIONE: I'm just trying to figure out how  
23 seven years we're there and not a word is said about it. Then  
24 we leave, he gets fired, and all of a sudden we're in court.

25 THE COURT: Why was he fired?

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1 MR. TARTAGGLIONE: Not from me.

2 MR. HEIDECKER: By the next successor employer.

3 THE COURT: By the next successor.

4 MR. TARTAGGLIONE: I just don't -- I just can't  
5 figure that out. Why wait seven years?

6 THE COURT: Well, that's another problem, a statute  
7 of limitations problem.

8 MR. TARTAGGLIONE: It just don't feel right.

9 THE COURT: How many employees did you have on the  
10 buildings that he was --

11 MR. TARTAGGLIONE: He probably had about four or  
12 five employees times four buildings.

13 THE COURT: Under him?

14 MR. TARTAGGLIONE: Four or five employees under him  
15 on each building.

16 THE COURT: On each building?

17 MR. TARTAGGLIONE: On each building.

18 THE COURT: And how many buildings?

19 MR. TARTAGGLIONE: Probably four or five.

20 THE COURT: So he's got about 20 people.

21 MR. TARTAGGLIONE: That's correct. And he was what  
22 we call a manager. He would go out and manage people and  
23 supervise people and get things done. He was never directed  
24 to do work.

25 THE COURT: Did you ever have him say that X is not

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1 doing the job --

2 MR. TARTAGGLIONE: Yes.

3 THE COURT: -- you ought to fire him?

4 MR. TARTAGGLIONE: Yes.

5 THE COURT: And what did you do?

6 MR. TARTAGGLIONE: Well, we took action. We  
7 followed up on things.

8 We have the manager at the time, Rich Rossi, already  
9 said that yes, he did recommend terminations of people, he did  
10 talk about disciplines of people. That's sort of what he was  
11 there for 'cause as a manager, as a site manager, you can't  
12 see everything. So you use those people to report back.

13 THE COURT: So, what did you have? You had a site  
14 manager for all the buildings?

15 MR. TARTAGGLIONE: We had a site manager for all the  
16 buildings, correct.

17 THE COURT: And then you had these, in your  
18 estimations, these sub-supervisors.

19 MR. TARTAGGLIONE: That's correct.

20 THE COURT: Who supervised the people that actually  
21 did the work.

22 MR. TARTAGGLIONE: At one time, there was I think  
23 seven of them. At one time, there was seven supervisors.

24 As far as the events go, he wasn't the only one  
25 doing events. There was another fellow there, a Tony Tetro,

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1 that was doing the events while --

2 THE COURT: Supervising.

3 MR. TARTAGGLIONE: Yes.

4 THE COURT: All right. As of this moment, the  
5 information I have doesn't permit me to find that he was not  
6 exempt. If you want to come in tomorrow with him and I'll  
7 question him, maybe he can convince me.

8 MR. HEIDECKER: Your Honor, with respect, I have two  
9 principals, Mr. Tartagglione --

10 THE COURT: I don't need him anymore.

11 MR. HEIDECKER: Well, I think he has a right to be  
12 here.

13 MR. TARTAGGLIONE: No, that's okay. I'm okay.

14 THE COURT: He can be here, but I'm not ordering him  
15 to be here.

16 MR. HEIDECKER: And Mr. Weber, the other one, is an  
17 Orthodox Jew, and today is a Jewish holiday, as is tomorrow.

18 MR. TARTAGGLIONE: It's okay.

19 THE COURT: I'm not going to be here Wednesday for  
20 this.

21 MR. ZUCKERMAN: Tomorrow's fine for us, Your Honor.

22 THE COURT: You want to bring him in tomorrow?

23 MR. POWERS: I'll bring him in, Your Honor.

24 THE COURT: As of this moment, you're out of court.

25 The evidence is just overwhelming that he was a supervisor.

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1           MR. POWERS: Well, the motion of defendant was with  
2 respect to the hours. They didn't make a motion with  
3 respect -- their affirmative defense, they didn't even  
4 raise --

5           THE COURT: I don't care what the motion is. If he  
6 was as exempt, you don't have a case.

7           Isn't that the position of everybody here?

8           MR. ZUCKERMAN: Yes, Your Honor.

9           MR. HEIDECKER: Yes, Your Honor.

10          THE COURT: So it appears from all of the evidence  
11 fairly clear that he was a supervisor. If he picked up a  
12 broom occasionally while a union agent wasn't watching or  
13 picked up the end of a table to help somebody, which was  
14 undoubtably a union violation, that doesn't make him a worker.  
15 Even judges pick up paper when they see it on the floor.

16          MR. HEIDECKER: Does the union know about that?

17          THE COURT: I'm not getting time-and-a-half. If I  
18 got time-and-a-half, it would break the government.

19          MR. POWERS: You have a different exemption, Your  
20 Honor.

21          THE COURT: True.

22          You want to bring him in tomorrow and we'll get the  
23 fingers out. I'm reluctant not to give him a chance to tell  
24 us what it is because the case is almost open and shut on him,  
25 the evidence that we have here.

*Proceedings*

23

1           You want to come in tomorrow?

2           MR. HEIDECKER: Yes, Your Honor, we serve the  
3 convenience of the Court.

4           THE COURT: 9:30. Get in here 9:30?

5           MR. TARTAGGLIONE: I'll get here.

6           THE COURT: So we'll adjourn it to 9:30 tomorrow.

7           All right. Any documents or pieces of deposition or  
8 anything you want to show me on this what I consider critical  
9 issue, let's have it because on the face of this, there's  
10 nothing here. And it's not as if he weren't well advised of  
11 what his status was because a prior contractor did the same  
12 thing.

13           Well, thanks very much, gentlemen. I'll see you at  
14 9:30 tomorrow.

15           MR. HEIDECKER: Thank you, Your Honor.

16           THE COURT: But go through the records. See what  
17 you can do on this point because it just doesn't seem right to  
18 me.

19           Thanks very much.

20           MR. ZUCKERMAN: Thank you.

21           THE COURT: Order immediate copy from St. John's.

22           (Time noted: 12:10 p.m.)  
23  
24  
25